

## 8 Official Opinions of the Compliance Board 170 (2013)

### ◆ Compliance Board – Authority and Procedures

#### ◇ Complaint

Complaints to be based on good-faith belief, after reasonable inquiry into the facts, that Act was violated

◇ Dismissal appropriate when allegations, taken as true do not state violation of Act

### ◆ Compliance Board – Authority and Procedures

#### ◇ Jurisdictional limits

No authority to address public body's decision on soliciting input from public

\*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

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May 13, 2013

Re: Baltimore County Council (*Ralph Jaffe, Complainant*)

We have considered the second complaint of Ralph Jaffe (“Complainant”) that the Baltimore County Council violated the Open Meetings Act (the “Act”) with regard to the meetings it held to consider adopting a stormwater remediation fee. We have also considered the documents submitted by the County Attorney on the Council’s behalf. As explained below, those documents negate the inference drawn by Complainant from a newspaper article, and we conclude that the Council did not commit the alleged violation.

In the first complaint, Complainant referred to a newspaper article for the proposition that the County Council had not held a “public hearing” before adopting the fee and had thereby violated the Act by adopting it at its April 15, 2013 meeting. As quoted by Complainant, the newspaper article stated:

[The] bill passed even though some council members complained it was being rushed without enough time for residents to speak out. The County held no public hearing on the issue.

Complainant also alleged that the Council’s action was “unethical,” and he asked us to “enforce [the Act] by requiring the Baltimore County Council to comply with the [Act] and conduct the vote again following a public hearing on the issue.”

The Act does not require public bodies to elicit comments from the public. It entitles a member of the public to “attend” an open session of the public body, but not to speak. *See* State Government Article (“SG”) § 10-507(a). The Act also does not place with us the function of addressing ethics matters, and we lack the authority to issue orders. Because Complainant did not allege that the Council had held April 15 meeting without notice, had closed it illegally, or had taken any other action that might have violated the Act, we dismissed the complaint as beyond our authority. The dismissal letter explained that we had no authority to address a complaint that a public body had taken an action without eliciting public comment. In an excess of caution, our staff verified that the April 15 meeting was, in fact, open to the public.

Complainant states that he is “re-submitting” that complaint. Now, however, he alleges that the County’s April 9, 2013 work session on the fee violated the Act. He complains that “No public hearing to specifically deal with the merits of [the fee] was held by the Baltimore County Council.” He again quotes the newspaper article. He states that the fact that only four members of the public spoke at the work session “clearly indicates that the public was not properly informed with regard to this matter” and states that the session was a “work session,” “not a public hearing.” He “question[s] the process” by which we dismissed his first complaint and protests that he “was not given the opportunity to testify” before us. Because the second complaint seemed to allege a lack of public notice for the April 9 session, and thus a potential violation of the Act, our staff forwarded it to the County for its response on that question.

The County Attorney responded with copies of the notices of the County’s two meetings. Those documents show that there is no basis in fact for an allegation that the County failed to give notice. The County advertised both meetings in three successive editions of the weekly local newspaper. The advertisements clearly state that the County Council would discuss the fee measure on both dates. The advertisements invite public comment. The same notice appeared on the County’s website on the “pending legislation” page. The County Council did not violate the notice provisions of the Act.

We add three notes. First, as members of our staff informed Complainant earlier this year, we do not take testimony: as constituted by the General Assembly, we are an advisory board, not a fact-finding tribunal. Second, as to our process for dismissing complaints, we do so rarely and only when a complaint contains allegations that, if accepted as true, would not violate any provision of the Act. We try to act promptly on those complaints to correct any misimpression on the part of the complainant or other members of the public about the public body’s compliance with the Act.

Finally, as we have stated before, “[t]he right to file a complaint should be exercised . . . only in the good-faith belief that the Act was indeed violated, based on a reasonable inquiry into the available facts.” 8

*OMCB Opinions* 99, 101 (2012). A “reasonable inquiry” often yields the citizen a faster answer than we can provide, sometimes serves to avoid an unnecessary complaint and unnecessary expenditure of the public body’s resources, and, otherwise, enables the complainant to provide us with more information.

In conclusion, the County Council gave proper notice for the meetings specified in the complaints. We have no role to play in a public body’s decision about how many meetings to hold before taking an action.

Open Meetings Compliance Board

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